

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

TESSERA, INC.,

No. C 12-692 CW

Plaintiff,

v.

MOTOROLA, INC.; QUALCOMM, INC.;  
FREESCALE SEMICONDUCTOR, INC.;  
and ATI TECHNOLOGIES, ULC,

Defendants.

ORDER DENYING  
WITHOUT PREJUDICE  
TESSERA'S MOTION  
TO ADOPT THE  
SPECIAL MASTER'S  
FIRST  
RECOMMENDATION  
REGARDING THE  
EXPERT REPORT OF  
CHARLES MOONEY  
(Docket No. 279)  
AND DENYING AS  
MOOT TESSERA'S  
MOTION TO SHORTEN  
TIME (Docket No.  
278)

On July 30, 2013, the Special Master issued a report and recommendation regarding Plaintiff Tessera, Inc.'s motion to strike the May 31, 2013 expert report of Mr. Charles Mooney and preclude him from testifying as an expert or fact witness at trial. Docket No. 274. The Special Master presented the Court with two alternative recommendations regarding the resolution of the motion. In the first, the Special Master recommended that the Court grant Tessera's motion, strike the expert report and preclude Mr. Mooney from testifying as an expert at trial but allow him to testify as a percipient witness, permit Tessera to take his deposition in this capacity and allow Tessera appropriate follow-up discovery on the subjects of Mr. Mooney's deposition testimony. In the second, the Special Master recommended that the Court deny Tessera's motion and decline to strike the expert report or preclude Mr. Mooney's expert testimony but permit

1 Tessera to take both a fact deposition and an expert deposition  
2 from Mr. Mooney and engage in appropriate follow-up discovery.

3 On August 6, 2013, Tessera moved the Court to adopt the  
4 Special Master's first recommendation. Docket No. 279. Tessera  
5 also filed a motion to shorten time on its motion to adopt the  
6 report and recommendation, so that Tessera would know the status  
7 of Mr. Mooney's expert report prior to August 30, 2013, when its  
8 rebuttal expert reports are due. Docket No. 278.

9 On August 8, 2013, Defendants Qualcomm, Inc., ASE, Freescale  
10 and ChipMOS filed a response to the Special Master's report and  
11 recommendation. Docket No. 282. Defendants represent that they  
12 have now agreed to withdraw Mr. Mooney's expert report and not to  
13 call Mr. Mooney as an expert witness at trial. Defendants also  
14 state that the parties are working to reach a joint stipulation to  
15 submit to the Court regarding Mr. Mooney's deposition and  
16 testimony as a fact witness.

1 Because Mr. Mooney's expert report has now been withdrawn,  
2 the Court DENIES AS MOOT Tessera's motion to shorten time (Docket  
3 No. 278). Further, based on Defendants' representations that this  
4 report has been withdrawn, that they will not call Mr. Mooney as  
5 an expert witness at trial and that the parties are presently  
6 working together to reach an agreement regarding his deposition  
7 and testimony as a fact witness, the Court DENIES Tessera's motion  
8 to adopt the Special Master's report and recommendation (Docket  
9 No. 279). This denial is without prejudice to Tessera renewing  
10 its motion if the parties are unable to agree to a stipulation.

11 IT IS SO ORDERED.

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13 Dated: 8/13/2013

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15 CLAUDIA WILKEN  
16 United States District Judge  
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